

ORIGINAL
FILED

NOV 29 AM 11:25

RICHARD W. WIERING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Matthew Franklin Jaksa (CA State Bar No. 248072)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: matt.jaksa@hro.com

E-Filed

Attorneys for Plaintiffs,
INTERSCOPE RECORDS; MOTOWN RECORD
COMPANY, L.P.; BMG MUSIC; FONOVISA,
INC.; SONY BMG MUSIC ENTERTAINMENT;
and LAFACE RECORDS LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA

INTERSCOPE RECORDS, a California general
partnership; MOTOWN RECORD COMPANY,
L.P., a California limited partnership; BMG
MUSIC, a New York general partnership;
FONOVISA, INC., a California corporation;
SONY BMG MUSIC ENTERTAINMENT, a
Delaware general partnership; and LAFACE
RECORDS LLC, a Delaware limited liability
company,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO.

6028

**EX PARTE APPLICATION FOR LEAVE
TO TAKE IMMEDIATE DISCOVERY**

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26
 2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum
 3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 1. Plaintiffs, record companies who own the copyrights in the most popular sound
 6 recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a
 7 third party Internet Service Provider ("ISP") to determine the true identity of Defendant, who is
 8 being sued for direct copyright infringement.¹

9 2. As alleged in the complaint, Defendant, without authorization, used an online media
 10 distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted works to
 11 the public. Although Plaintiffs do not know the true name of Defendant, Plaintiffs have identified
 12 Defendant by a unique Internet Protocol ("IP") address assigned to Defendant on the date and time
 13 of Defendant's infringing activity.

14 3. Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that
 15 identify Defendant's true name, current (and permanent) address and telephone number, e-mail
 16 address, and Media Access Control ("MAC") address. Without this information, Plaintiffs cannot
 17 identify Defendant or pursue their lawsuit to protect their copyrighted works from repeated
 18 infringement.

19 4. Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a
 20 Rule 26(f) conference where there are no known defendants with whom to confer.

21
 22
 23
 24
 25
 26 ¹ Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to personally serve
 27 Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of Court pursuant to Fed. R. Civ. P.
 28 5(b)(2)(C) ("If the person served has no known address, [service under Rule 5(a) is made by] leaving a copy with the
 clerk of the court.") and will serve Defendant's ISP with a copy of this motion. Additionally, if the Court grants this
 motion, Plaintiffs will ask the ISP to notify the Defendants of the subpoena and provide Defendant with an opportunity
 to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct the
2 foregoing requested discovery immediately.

3 Dated: November 29, 2007

HOLME ROBERTS & OWEN LLP

4
5 By: 

MATTHEW FRANKLIN JAKSA
Attorney for Plaintiffs
INTERSCOPE RECORDS; MOTOWN
RECORD COMPANY, L.P.; BMG
MUSIC; FONOVisA, INC.; SONY BMG
MUSIC ENTERTAINMENT; and
LAFACE RECORDS LLC